IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 940 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI BECHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 940 of 2001

MR KISHOR M PAUL for Petitioner No. 1

MR SS PATEL, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/01/2002

ORAL JUDGEMENT

1. The petitioner is aggrieved by an order passed by the the learned Additional Sessions Judge, Rajkot, on August 27, 2001, dismissing Criminal Revision Application No.123 of 2001, arising out of an order passed by learned

Judicial Magistrate, First Class, Rajkot, in Criminal Case No.5299 of 2001 in an application for return of muddamal, pending the trial, preferred under Section 451 of the Code of Criminal Procedure.

2. The facts of the case, in brief, can be stated thus:-

2.1 An offence came to be listed vide Rajkot City "A" Division Police Station C.R. No.148 of 2001 for offences punishable under Sections 255, 259, 467, 468, 471, 420 and 114 of Indian Penal code for counterfeiting various stamp papers with the help of xerox machines. The police during the course of investigation found that the petitioner's xerox machine was used in producing the counterfeit stamps. The xerox machine was, therefore, seized by the police.

2.2 The petitioner, therefore, applied for custody of muddamal pending the trial on 17.5.2001 in the Court of learned Judicial Magistrate, First Class, Rajkot. The learned Judicial Magistrate, First Class, by order dated 14.6.2001 rejected that application. That order was challenged by way of revision application before the Sessions Court vide Criminal Revision Application No.88 of 2001, which came to be dismissed by an order dated 19.7.2001. Thereafter, once again an application came to be preferred on 6.8.2001 before the learned Judicial Magistrate, First Class, seeking custody of the muddamal xerox machine, pending the trial, on the ground that the charge sheet is filed. The learned Judicial Magistrate, First Class, rejected that application by order dated 14.8.2001 holding that he was not inclined to allow the application and, therefore, the application stood rejected. Aggrieved by the said order, Revision Application No.123 of 2001 was preferred, which came to be dismissed by the impugned order dated August 27, 2001. The petitioner challenges the order in this petition under Article 227 of the Constitution.

3. From the beginning, the case of the petitioner is that he is not directly involved in commission of the offence. He is doing the business of running xerox machines and, therefore, he is not required to inquire into the nature of the document. The machine is his source of livelihood and, therefore, the machine may be returned on any condition that may be deemed proper. It was contended that the petitioner's antecedents are clean and clear. The petitioner has not committed any offence and, lastly, the xerox machine, being electronic in nature, is likely to deteriorate if it lies idle without

being serviced regularly. The trial is likely to take more time and, therefore, the machine may be returned.

4. In the first round, the Magisterial Court as well as the Sessions Court rejected the application for custody of muddamal pending the trial on the ground that the machine may be re-used for similar offences. Those orders were accepted by the petitioner and not challenged. In the second round, after the filing of the charge sheet, the Court rejected the applications on the same ground that the machine may be re-used for commission of similar offence. The Courts observed that no new ground is made out except filing of the charge sheet and, in absence of any fresh, relevant and valid ground, the case of the applicant does not require any consideration. That is how both the courts below rejected the application, which has prompted the petitioner to approach this Court with this petition under Article 227 of the Constitution.

5. Learned advocate Mr. Kishor Paul submitted that the xerox machine is the source of livelihood for the petitioner. The trial is likely to take 5-6 years in concluding as the accused persons are bailed out. He submitted that, if the machine is not returned, it would lie idle and unserviced. The machine would, ultimately, be reduced to a scrap and, therefore, the machine ought to have been handed over to the custody of the petitioner.

6. The petition has been vehemently opposed to by learned Additional Public Prosecutor, Mr. Patel. According to Mr. Patel, considering the large number of documents that are xeroxed, it cannot be said that it was a routine daily for the petitioner, considering the nature of document, namely, blank stamp papers. Mr. Patel submitted that there is no material to indicate that the petitioner has no connection with the principal accused and that he is a xerox operator simpliciter. He, therefore, urged that, on merits, the petitioner has no case.

6.1 Mr. Patel's second fold of argument was that the petitioner's application was rejected by both the Courts below earlier on the same ground and, at that point of time, the order was not challenged. Now, at this stage, a second round is sought to be fought only on a cosmetic change of circumstance, which is not permissible. He, therefore, urged that the petition may be dismissed.

7. Having regard to rival side contentions, at the

outset, it may be noted that this being a petition under Article 227 of the Constitution, the scope for interference by this Court is limited. The Apex Court in case of Mohd. Yunus v. Mohd. Mustaqim & Ors., AIR 1984 SC 38 observed thus :

> '7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeking that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record much less an error of law.'

8. Mr. Paul is not in a position to indicate, in the instant case, either of the Courts below has not acted within the limits of its authority. What is argued is on merits and on merits also, this Court is not inclined to interfere for the reason that fake stamp papers in large number have been xeroxed in this machine. The court does not have anything before it to accept even prima facie that the petitioner did not have any nexus with the principal offenders. There is no reason to presume that the machine will not be used again for such very purpose and, therefore, this Court is not inclined to entertain this petition.

9. However, there is some substance in the contention of Mr. Paul that xerox, being an electronic machine, needs to looked after by regular servicing and proper maintenance. If that is not done, at the end of the trial, it may be reduced to scrap. In order that this loss does not occur, it would be appropriate, if the petitioner is permitted to get the xerox machine serviced periodically while the machine lies in custody of police or Court. A direction either to the police or to the Court below in this regard would serve the ends of justice.

10. The petition stands dismissed with following directions:-

The police authority or the Court below, in whose custody the xerox machine in question is, will permit the petitioner, if he so chooses to do, to get the machine serviced once in a month, as per the convenience of the police authority or the Court concerned. The cost of such servicing will be borne by the petitioner.

Rule is discharged.

[A.L. DAVE, J.]

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